

**ASSEMBLY BILL**

**No. 2318**

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**Introduced by Assembly Member Low**

February 18, 2016

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An act to amend Sections 54964.5 and 54964.6 of the Government Code, relating to campaign activity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2318, as introduced, Low. Fair Political Practices Commission: enforcement: use of public resources.

(1) Existing law prohibits the use of public funds for campaign activities. Existing law prohibits a nonprofit organization or an officer, employee, or agent of a nonprofit organization from using, or permitting another to use public resources received from a local agency for campaign activity, as defined, and not authorized by law. Existing law defines, among other terms, “public resources” to mean any property or asset owned by a local agency and funds received by a nonprofit organization which have been generated from any activities related to conduit bond financing by those entities subject to specified conduit financing and transparency and accountability provisions, and “nonprofit organization” to mean an entity incorporated under the Nonprofit Corporation Law or a nonprofit organization that qualifies for exempt status under the federal Internal Revenue Code of 1986, except as specified. Existing law authorizes a civil cause of action for a violation of these prohibitions and damages that include, but are not limited to, 3 times the value of the unlawful use of the public resources. Existing law authorizes the Attorney General, a district attorney, and a city attorney of a city having a population in excess of 750,000 to seek these civil remedies.

This bill additionally would authorize the Fair Political Practices Commission to bring a civil action or to commence an administrative action for violation of these provisions.

(2) Existing law requires qualifying individuals and political organizations to report specified information, including, but not limited to, political contributions, in statements filed with the Fair Political Practices Commission. Existing law requires a reporting nonprofit organization that engages in campaign activity to deposit into a separate bank account all “specific source or sources of funds” it receives and to pay for all campaign activity from that separate bank account. Existing law defines, among other terms, “reporting nonprofit organization” to mean a nonprofit organization for which public resources from one or more local agencies account for more than 20% of the nonprofit organization’s annual gross revenue, as specified, and “specific source or sources of funds” to mean any funds received by the reporting nonprofit organization that have been designated for campaign activity use or any other funds received by the nonprofit organization.

Existing law requires a reporting nonprofit organization that engages in campaign activity of specified amounts or more to periodically disclose to the Franchise Tax Board, and post on its Internet Web site in a certain manner, the identity and amount of each specific source or sources of funds it receives for campaign activity, a description of the campaign activity, and the identity and amount of payments the organization makes from the required separate bank account. Existing law authorizes the Franchise Tax Board to conduct an audit of any reporting nonprofit organization and requires the board to conduct an audit of any reporting nonprofit organization that engages in campaign activity in excess of \$500,000 in a calendar year. Existing law requires the board to issue a written audit report and to transmit the report to the Attorney General and the district attorney for the county in which the reporting nonprofit organization is domiciled. Existing law authorizes the Attorney General or the district attorney for the county in which the reporting nonprofit organization is domiciled to assess a monetary civil penalty of up to \$10,000 against a reporting nonprofit organization for each violation of these disclosure requirements.

This bill would change the term “reporting nonprofit organization” to “publicly funded multipurpose organization,” described as a multipurpose organization as defined in the Political Reform Act for which public resources from one or more local agencies account for more than 20% of the multipurpose organization’s annual gross revenue,

as specified. This bill would redefine “specific source or sources of funds” to mean payments or funds that meet specified criteria received by the publicly funded multipurpose organization from donors that are for, or may be used for, contributions or expenditures, as specified, or any other funds received by the publicly funded multipurpose organization within a two-year period that are used for campaign activity. This bill would shift the Franchise Tax Board’s duties under these provisions to the Fair Political Practices Commission and would authorize the Fair Political Practices Commission, in addition to the Attorney General or the district attorney, to impose the civil penalty of up to \$10,000 against a publicly funded multipurpose organization for each violation.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a  $\frac{2}{3}$  vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 54964.5 of the Government Code is  
2 amended to read:

3 54964.5. (a) A nonprofit organization or an officer, employee,  
4 or agent of a nonprofit organization shall not use, or permit another  
5 to use, public resources, received from any local agency for any  
6 campaign activity not authorized by law.

7 (b) As used in this section and Section 54964.6, the following  
8 terms shall have the following meanings:

9 (1) “Ballot measure” means a state or local initiative,  
10 referendum, or recall measure certified to appear on a regular or  
11 special election ballot or other measure submitted to the voters by  
12 the Legislature or the governing body of a local agency at a regular  
13 or special election.

14 (2) “Campaign activity” means a payment that is used for  
15 communications that expressly advocate for or against the  
16 qualification of a clearly identified ballot measure, the approval  
17 or rejection of a clearly identified ballot measure, or the election

1 or defeat of a clearly identified candidate by the voters, or that  
2 constitutes a campaign contribution.

3 (A) “Campaign activity” does not include the costs of adopting  
4 a position or a resolution supporting or opposing a clearly identified  
5 ballot measure or candidate, including, but not limited to, posting  
6 the position or resolution on the nonprofit organization’s Internet  
7 Web site, communicating the position or resolution to members  
8 of the nonprofit organization, or issuing a press statement.

9 (B) “Campaign activity” does not include incidental or minimal  
10 use of public resources.

11 (C) “Campaign activity” does not include incidental costs related  
12 to the establishment or administration of a sponsored committee  
13 as defined in Section 82048.7. A reasonable accounting method  
14 may be used to determine the use of nonpublic resources to pay  
15 for that cost. “Establishment and administration” means the cost  
16 of office space, telephones, salaries, utilities, supplies, legal and  
17 accounting fees, and other expenses incurred in establishing and  
18 operating a sponsored committee.

19 (3) “Candidate” means an individual who has qualified to have  
20 his or her name listed on the ballot, or who has qualified to have  
21 write-in votes on his or her behalf counted by elections officials,  
22 for nomination or election to an elective office at any regular or  
23 special primary or general election, and includes any officeholder  
24 who is the subject of a recall election.

25 (4) “Expenditure” means a payment used for communications  
26 that expressly advocate the approval or rejection of a clearly  
27 identified ballot measure, or the election or defeat of a clearly  
28 identified candidate, by the voters or that constitutes a campaign  
29 contribution.

30 (5) “Local agency” shall have the same meaning as that term is  
31 defined in paragraph (4) of subdivision (b) of Section 54964 and  
32 shall also include a public entity created pursuant to the Joint  
33 Exercise of Powers Act (Chapter 5 (commencing with Section  
34 6500) of Division 7 of Title 1) by one or more entities described  
35 in Section 54964.

36 (6) “Nonprofit organization” means any entity incorporated  
37 under the Nonprofit Corporation Law (Division 2 (commencing  
38 with Section 5000) of Title 1 of the Corporations Code) or a  
39 nonprofit organization that qualifies for exempt status under  
40 Section 115 or 501(c) of the Internal Revenue Code, provided,

1 however, that “nonprofit organization” does not include any  
2 nonprofit organization that qualifies for tax-exempt status under  
3 Section 501(c)(3) of the Internal Revenue Code.

4 (7) “Public resources” means the following:

5 (A) Any property or asset owned by a local agency, including,  
6 but not limited to, cash, land, buildings, facilities, funds, equipment,  
7 supplies, telephones, computers, vehicles, travel, and local  
8 government compensated work time that is provided to a nonprofit  
9 organization, except funds received in exchange for consideration  
10 for goods or services.

11 (B) Funds received by a nonprofit organization which have been  
12 generated from any activities related to conduit bond financing by  
13 those entities subject to the conduit financing and transparency  
14 and accountability provisions of Chapter 10.7 (commencing with  
15 Section 5870) of Division 6 of Title 1, whether or not those funds  
16 are received by the nonprofit in exchange for consideration for  
17 goods or services.

18 (8) “Use” means a use of public resources from one or more  
19 local agencies that is substantial enough to result in a gain or  
20 advantage to the user or a loss to any local agency for which any  
21 monetary value may be estimated.

22 (c) This section does not prohibit the use of public resources  
23 for providing information to the public about the possible effects  
24 of any ballot measure on the activities, operations, or policies of  
25 the state or a local agency, provided that the informational activities  
26 meet both of the following conditions:

27 (1) The informational activities are not otherwise prohibited by  
28 the California Constitution or the laws of this state.

29 (2) The information provided constitutes an accurate, fair, and  
30 impartial presentation of relevant facts to aid the electorate in  
31 reaching an informed judgment regarding the ballot measure.

32 (d) (1) Any person who intentionally or negligently violates  
33 this section is liable for a civil penalty not to exceed one thousand  
34 dollars (\$1,000) for each day on which a violation occurs, plus  
35 three times the value of the unlawful use of public resources. The  
36 penalty shall be assessed and recovered in a civil action brought  
37 in the name of the people of the State of California by the ~~Attorney~~  
38 ~~General~~ *Fair Political Practices Commission, the Attorney*  
39 *General*, or by any district attorney or any city attorney of a city  
40 having a population in excess of 750,000. If two or more persons

1 are responsible for any violation, they shall be jointly and severally  
2 liable for the penalty. If the action is brought by the *Fair Political*  
3 *Practices Commission* or the Attorney General, the moneys  
4 recovered shall be paid into the General Fund. If the action is  
5 brought by a district attorney, the moneys recovered shall be paid  
6 to the treasurer of the county in which the judgment was entered.  
7 If the action is brought by a city attorney, the moneys recovered  
8 shall be paid to the treasury of that city. *No more than one judgment*  
9 *on the merits with respect to any violation may be obtained under*  
10 *this paragraph.*

11 (2) A civil action alleging a violation of this section shall not  
12 be commenced more than four years after the date of the alleged  
13 violation.

14 (3) *The Fair Political Practices Commission shall have the*  
15 *jurisdiction to commence an investigation for a violation of this*  
16 *section in the manner described in Section 83115. No civil action*  
17 *may be filed or prosecuted under paragraph (1) with regard to*  
18 *any person for any violation of this section after the Fair Political*  
19 *Practices Commission has issued an order in the manner described*  
20 *in Section 83116 against that person for the same violation.*

21 SEC. 2. Section 54964.6 of the Government Code is amended  
22 to read:

23 54964.6. (a) ~~A—reporting—nonprofit~~ *publicly funded*  
24 *multipurpose* organization that engages in campaign activity, either  
25 directly or through the control of another entity, shall deposit into  
26 a separate bank account all specific source or sources of funds  
27 received and shall pay for all campaign activity from that separate  
28 bank account.

29 (b) As used in this section, the following terms shall have the  
30 following meanings:

31 (1) ~~“Reporting nonprofit organization” means a nonprofit~~  
32 ~~organization for which public resources—~~ *“Publicly funded*  
33 *multipurpose organization” means a multipurpose organization,*  
34 *as defined in subdivision (a) of Section 84222, for which public*  
35 *resources, as defined in paragraph (7) or subdivision (b) of Section*  
36 *54964.5, from one or more local agencies account for more than*  
37 *20 percent of the—nonprofit multipurpose organization’s annual*  
38 *gross revenue in the current fiscal year or either of the previous*  
39 *two fiscal years. A—reporting—nonprofit publicly funded*  
40 *multipurpose organization shall not include a—nonprofit*

1 *multipurpose* organization that sponsors a committee, as defined  
2 in Section ~~82048.7~~ of the Government Code, 82048.7, if the  
3 ~~nonprofit~~ *multipurpose* organization reports all ~~contributions it~~  
4 *specific sources of funds* received and all ~~expenditures it made~~  
5 *campaign activities* on campaign disclosure statements filed by  
6 the sponsored committee and the ~~nonprofit~~ *multipurpose*  
7 organization makes no payments from its general treasury to the  
8 sponsored committee other than payments for contributions by  
9 donors earmarked for the sponsored committee. For purposes of  
10 this subdivision, “earmarked” means a payment by a donor to a  
11 ~~nonprofit~~ *multipurpose* organization subject to a condition,  
12 agreement, or understanding that the payment will be used for  
13 making contributions or independent expenditures by the sponsored  
14 committee of the sponsoring ~~nonprofit~~ *multipurpose* organization.

15 (2) “Specific source or sources of funds” shall mean any ~~funds~~  
16 ~~received by the reporting nonprofit organization that have been~~  
17 ~~designated for campaign activity use or any other funds received~~  
18 ~~by the nonprofit organization that are used, in whole or in part,~~  
19 ~~within a two-year period from receipt for campaign activity.~~ *of the*  
20 *following:*

21 (A) *Payments the publicly funded multipurpose organization*  
22 *solicits and receives from donors in an amount equal to or greater*  
23 *than the amount identified in subdivision (a) of Section 82013 for*  
24 *the purpose of making contributions or expenditures.*

25 (B) *Payments the publicly funded multipurpose organization*  
26 *receives from donors in an amount equal to or greater than the*  
27 *amount identified in subdivision (a) of Section 82013 subject to a*  
28 *condition, agreement, or understanding with the donor that all or*  
29 *a portion of the payments may be used for making contributions*  
30 *or expenditures.*

31 (C) *Existing funds of the publicly funded multipurpose*  
32 *organization from a donor and a subsequent agreement or*  
33 *understanding is reached with the donor that all or a portion of*  
34 *the funds may be used for making contributions or expenditures*  
35 *in an amount equal to or greater than the amount identified in*  
36 *subdivision (a) of Section 82013. The date of the subsequent*  
37 *agreement or understanding is deemed to be the date of receipt of*  
38 *the payment.*

1 (D) Any other funds received by the publicly funded  
2 multipurpose organization within a two-year period that are used  
3 for campaign activity.

4 (3) Unless otherwise defined herein, the definitions found in  
5 subdivision (b) of Section 54964.5 shall apply to this section.

6 (c) Thirty days after the end of each quarter, a ~~reporting~~  
7 ~~nonprofit~~ publicly funded multipurpose organization that engages  
8 in campaign activity of fifty thousand dollars (\$50,000) or more  
9 related to statewide candidates or ballot measures or engages in  
10 campaign activity of two thousand five hundred dollars (\$2,500)  
11 or more related to local candidates or ballot measures, either  
12 directly or through the control of another entity, at any point during  
13 that quarter shall disclose the following information for that  
14 quarter:

15 (1) The name and amount of each specific source or sources of  
16 funds used for campaign activity, provided that the aggregate  
17 amount of funds received since January 1 of the most recent odd  
18 year by a ~~reporting nonprofit~~ publicly funded multipurpose  
19 organization from that specific source or sources of funds is at  
20 least ~~two hundred fifty dollars (\$250)~~ one thousand dollars  
21 (\$1,000). The publicly funded multipurpose organization shall  
22 report all sources of funds that satisfy the criteria of paragraph  
23 (2) of subdivision (b) and for the balance of its campaign activities  
24 paid from the separate bank account. The publicly funded  
25 multipurpose organization shall report sources of funds based on  
26 a last in, first out accounting method. For purposes of this section,  
27 “last in, first out accounting method” means an accounting method  
28 by which contributions and expenditures are attributed to the  
29 multipurpose organization’s contributors in reverse chronological  
30 order beginning with the most recent of its contributors or, if there  
31 are any prior contributions or expenditures, beginning with the  
32 most recent contributor for which unattributed contributions  
33 remain.

34 (2) The name of the payee and amount of all payments  
35 aggregating two hundred fifty dollars (\$250) or more made from  
36 the single bank account required under subdivision (a).

37 (3) A description of each campaign activity.

38 (d) ~~Thirty days after~~ By January 31 following the end of each  
39 even year, a ~~reporting nonprofit~~ publicly funded multipurpose  
40 organization that engages in campaign activity of one hundred



1 thousand (\$100,000) or more related to statewide candidates or  
 2 ballot measures or engages in campaign activity of ten thousand  
 3 dollars (\$10,000) or more related to local candidates or ballot  
 4 measures, either directly or through the control of another entity,  
 5 at any point during that even year or the prior odd year shall  
 6 disclose all the following information for those two calendar years:

7 (1) The name and amount of any specific source or sources of  
 8 funds used for campaign activity, provided that the aggregate  
 9 amount of funds received since January 1 of the most recent odd  
 10 year by a ~~reporting nonprofit~~ *publicly funded multipurpose*  
 11 organization from that specific source or sources of funds is at  
 12 least ~~two hundred fifty dollars (\$250)~~ *one thousand dollars*  
 13 *(\$1,000)*.

14 (2) The name of the payee and amount of all payments  
 15 *aggregating two hundred fifty dollars (\$250) or more* made from  
 16 the single bank account required under subdivision (a).

17 (3) A description of each campaign activity.

18 (e) Each ~~reporting nonprofit~~ *publicly funded multipurpose*  
 19 organization that engages in campaign activity, either directly or  
 20 through the control of another entity, shall provide to the ~~Franchise~~  
 21 ~~Tax Board~~ *Fair Political Practices Commission* and display on its  
 22 Internet Web site the information it is required to disclose under  
 23 this section. The information shall be clearly described and  
 24 identified on a separate Internet Web page, which shall be linked  
 25 from the homepage of the organization's Internet Web site. The  
 26 link to this Internet Web page from the homepage shall be as visible  
 27 as all similar links.

28 (f) The ~~Franchise Tax Board~~ *Fair Political Practices*  
 29 *Commission* may ~~conduct~~ *require* an audit of any ~~reporting~~  
 30 ~~nonprofit~~ *publicly funded multipurpose* organization that is required  
 31 to provide records to the ~~board~~ *Fair Political Practices Commission*  
 32 pursuant to this section. The ~~Franchise Tax Board~~ *Fair Political*  
 33 *Practices Commission* shall ~~conduct~~ *require* an audit of any  
 34 ~~reporting nonprofit~~ *publicly funded multipurpose* organization that  
 35 engages in campaign activity in excess of five hundred thousand  
 36 dollars (\$500,000) in a calendar year. The ~~reporting nonprofit~~  
 37 *publicly funded multipurpose* organization shall provide records  
 38 to the ~~Franchise Tax Board~~ *Fair Political Practices Commission*  
 39 that substantiate the information required to be disclosed by this  
 40 section. The ~~Franchise Tax Board~~ *Fair Political Practices*

1 *Commission* shall determine whether the organization complied  
2 with the requirements of Section 54964.5 and this section, issue a  
3 written audit report, and transmit the written audit report to the  
4 Attorney General and the district attorney for the county in which  
5 the ~~reporting nonprofit~~ *publicly funded multipurpose* organization  
6 is domiciled.

7 (g) If the ~~Franchise Tax Board~~ *Fair Political Practices*  
8 *Commission* determines at the conclusion of an audit that a  
9 ~~reporting nonprofit~~ *publicly funded multipurpose* organization has  
10 violated Section 54964.5 or this section, the ~~Attorney General~~ *Fair*  
11 *Political Practices Commission, the Attorney General, or the*  
12 district attorney for the county in which the ~~reporting nonprofit~~  
13 *publicly funded multipurpose* organization is domiciled may impose  
14 a civil fine upon the ~~reporting nonprofit~~ *publicly funded*  
15 *multipurpose* organization in an amount up to ten thousand dollars  
16 (\$10,000) for each violation.

17 SEC. 3. The Legislature finds and declares that this bill furthers  
18 the purposes of the Political Reform Act of 1974 within the  
19 meaning of subdivision (a) of Section 81012 of the Government  
20 Code.